

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

RICHARD UPPER,

Plaintiff,

- against -

CBS INTERACTIVE INC.

Defendant.

Docket No. 2:20-cv-3006

JURY TRIAL DEMANDED

**COMPLAINT**

Plaintiff Richard Upper (“Upper” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant CBS Interactive Inc. (“CBS Interactive” or “Defendant”) hereby alleges as follows:

**NATURE OF THE ACTION**

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photograph of John Cassavetes, Gene Rowlands and Ben Gazzara on the set of Opening Night, owned and registered by Upper, a professional photographer. Accordingly, Upper seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

**JURISDICTION AND VENUE**

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or transacts business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

### **PARTIES**

5. Upper is a professional photographer in the business of licensing his photographs to online and print media for a fee having a usual place of business at 4713 Halbreth Avenue, Sherman Oaks, California 91403.

6. Upon information and belief, CBS Interactive is a domestic limited liability company duly organized and existing under the laws of the State of New York with a place of business 51 West 52<sup>nd</sup> Street, New York, New York 10019. Upon information and belief CBS Interactive is registered with the New York Department of State Division of Corporations to do business in the State of New York. At all times material, hereto, CBS Interactive has owned and operated a website at the URL: [www.CBSNews.com](http://www.CBSNews.com) (the “Website”).

### **STATEMENT OF FACTS**

#### **A. Background and Plaintiff’s Ownership of the Photograph**

7. Upper photographed John Cassavetes, Gene Rowlands and Ben Gazzara on the set of Opening Night (the “Photograph”). A true and correct copy of the Photograph is attached hereto as Exhibit A.

8. Upper is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

9. The Photograph was registered with the United States Copyright Office and was given registration number VA 2-116-067.

#### **B. Defendant’s Infringing Activities**

10. CBS Interactive ran a slideshow on the Website entitled *Oscar honors Gena Rowland*. See: <https://www.cbsnews.com/pictures/gena-rowlands/17/>. A true and correct copy of the article and a screenshot of the Photograph on the Website are attached hereto as Exhibit B.

11. CBS Interactive did not license the Photograph from Plaintiff for its Website, nor did CBS Interactive have Plaintiff's permission or consent to publish the Photograph on its Website.

**CLAIM FOR RELIEF**  
**(COPYRIGHT INFRINGEMENT AGAINST DEFENDANT)**  
**(17 U.S.C. §§ 106, 501)**

12. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-11 above.

13. CBS Interactive infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on the Website. CBS Interactive is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

14. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

15. Upon information and belief, the foregoing acts of infringement by Defendant have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

16. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

17. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendant's willful infringement of the Photograph, pursuant to 17 U.S.C. § 504(c).

18. Plaintiff further is entitled to his attorney's fees and full costs pursuant to 17 U.S.C. § 505.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant CBS Interactive be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. That Plaintiff be awarded Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded punitive damages for copyright infringement;
5. That Plaintiff be awarded attorney's fees and costs;
6. That Plaintiff be awarded pre-judgment interest; and
7. Such other and further relief as the Court may deem just and proper.

### **DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York  
April 13, 2020

LIEBOWITZ LAW FIRM, PLLC

By: /s/Richard Liebowitz  
Richard P. Liebowitz, Esq.  
11 Sunrise Plaza, Suite 305

Valley Stream, New York 11580  
Tel: (516) 233-1660  
RL@LiebowitzLawFirm.com

*Attorneys for Plaintiff Richard Upper*